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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ELISA LOPEZ, Plaintiff, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

TANGOME, INC., a Delaware
corporation; **DOES 1 through 10**.

Defendants.

Case No. 5:12-cv-06300-HRL

**DEFENDANT TANGOME, INC.'S
ANSWER TO COMPLAINT**



1 Defendant TangoMe, Inc. ("Defendant"), in answer to the Complaint for Damages
2 and Injunctive Relief for Violations of 47 U.S.C. §227 of Plaintiff Elisa Lopez ("Plaintiff"),
3 herein admits, denies, and avers as follows:

4 **INTRODUCTION**

5 1. Defendant denies the allegations of Paragraph 1.

6 **PARTIES**

7 2. Defendant lacks knowledge or information sufficient to form a belief as to
8 the truth of the allegations contained in Paragraph 2 and, on that basis, denies the same.

9 3. Defendant admits the allegations of Paragraph 3.

10 4. Defendant lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegations contained in Paragraph 4 and, on that basis, denies the same.

12 **JURISDICTION**

13 5. Defendant admits the allegations of Paragraph 5.

14 6. Defendant admits that it maintains an office in California. Except as
15 expressly admitted, Defendant lacks knowledge or information sufficient to form a belief
16 as to the truth of the allegations contained in Paragraph 6 and, on that basis, denies the
17 same.

18 **VENUE**

19 7. Defendant admits that it maintains an office in California. . The remaining
20 allegations contained in Paragraph 7 are prefatory, contain legal verbiage, and call for a
21 conclusion of law to which no response is required. To the extent that a response is
22 required, except as expressly admitted, Defendant denies the allegations contained in
23 Paragraph 7.

24 **INTRADISTRICT ASSIGNMENT**

25 8. Defendant admits that it maintains an office in Palo Alto, California. The
26 remaining allegations contained in Paragraph 8 are prefatory, contain legal verbiage, and
27 call for a conclusion of law to which no response is required. To the extent that a
28



1 response is required, except as expressly admitted, Defendant denies the allegations
2 contained in Paragraph 8.

3 **COMMON ALLEGATIONS**

4 9. Defendant lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations contained in Paragraph 9 and, on that basis, denies the same.

6 10. Defendant lacks knowledge or information sufficient to form a belief as to
7 the truth of the allegations contained in Paragraph 10 and, on that basis, denies the
8 same.

9 11. Defendant lacks knowledge or information sufficient to form a belief as to
10 the truth of the allegations contained in Paragraph 11 and, on that basis, denies the
11 same.

12 12. Defendant lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations contained in Paragraph 12 and, on that basis, denies the
14 same.

15 13. Defendant lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations contained in Paragraph 13 and, on that basis, denies the
17 same.

18 14. Defendant lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations contained in Paragraph 14 and, on that basis, denies the
20 same.

21 15. Defendant lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations contained in Paragraph 15 and, on that basis, denies the
23 same.

24 16. Defendant denies the allegations of Paragraph 16.

25 17. Defendant lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations contained in Paragraph 17 and, on that basis, denies the
27 same.

28 18. Defendant denies the allegations of Paragraph 18.



19. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 and, on that basis, denies the same.

20. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 and, on that basis, denies the same.

CLASS ALLEGATIONS

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 and, on that basis, denies the same.

22. Defendant denies the allegations of Paragraph 22.

23. Defendant denies the allegations of Paragraph 23.

24. Defendant denies the allegations of Paragraph 24 and all sub-paragraphs thereof.

25. Defendant denies the allegations of Paragraph 25.

26. Defendant denies the allegations of Paragraph 26.

27. Defendant denies the allegations of Paragraph 27.

FIRST CLAIM FOR RELIEF

Damages for Violation of the TCPA

28. Defendant incorporates by reference its responses to the preceding Paragraphs as if fully set forth herein.

29. Defendant denies the allegations of Paragraph 29.

30. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 and, on that basis, denies the same.

31. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 and, on that basis, denies the same.



32. Defendant denies the allegations of Paragraph 32.

33. Defendant denies the allegations of Paragraph 33.

34. Defendant denies the allegations of Paragraph 34.

35. Defendant denies the allegations of Paragraph 35.

SECOND CLAIM FOR RELIEF

Injunctive Relief for Violation of the TCPA

36. Defendant incorporates by reference its responses to the preceding Paragraphs as if fully set forth herein.

37. The allegations contained in Paragraph 37 are prefatory, contain legal verbiage, and call for a conclusion of law to which no response is required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 37.

38. Defendant denies the allegations of Paragraph 38.

39. Defendant denies the allegations of Paragraph 39.

AFFIRMATIVE DEFENSES

Defendant sets forth below its affirmative defenses. Each defense is asserted as to all causes of action unless otherwise noted. By setting forth these affirmative defenses, Defendant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended, or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Plaintiff's allegations.

FIRST AFFIRMATIVE DEFENSE

(Failure to State Cause of Action)

Plaintiff has failed to state a cause of action against Defendant upon which relief may be granted. Plaintiff has failed to plead the prima facie elements of its asserted causes of action.

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1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Consent)**

3 Plaintiff's action, and each claim asserted therein, is barred because Plaintiff
4 provided her consent for the alleged text messages including, without limitation, "prior
5 express consent" as defined by the TCPA.

6
7 **THIRD AFFIRMATIVE DEFENSE**

8 **(Section 230 of the Communications Decency Act)**

9 Plaintiff's action, and each claim asserted therein, is barred by Section 230(c) of
10 the Communications Decency Act because Defendant is a provider of an interactive
11 computer service and Plaintiff, through the action, seeks to treat Defendant as the
12 publisher or speaker of information provided by another information content provider.

13
14 **FOURTH AFFIRMATIVE DEFENSE**

15 **(First Amendment)**

16 Plaintiff's action, and each claim asserted therein, is barred by the First
17 Amendment as an unlawful abridgment of the freedom of speech.

18
19 **FIFTH AFFIRMATIVE DEFENSE**

20 **(Action Should Not Be Certified As A Class Action)**

21 Plaintiff's action, and each claim asserted therein, does not satisfy the legal
22 requirements for class action certification, such as the predominance of common
23 questions over individual facts.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Settlement Credits)**

3 In the event that a settlement is reached between Plaintiff or any class member,
4 on the one hand, and any other person or entity on the other hand, Defendant is entitled
5 to any settlement credits permitted by law.

6
7 **SEVENTH AFFIRMATIVE DEFENSE**

8 **(Failure to Mitigate)**

9 The damages and harms alleged in the Complaint, which are expressly denied,
10 are barred by Plaintiff's failure to comply with the terms of the alleged contract and
11 Plaintiff's failure to fulfill all conditions precedent to enforcing the same.

12
13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Contribution)**

15 The acts and omissions alleged in the Complaint, as well as the damages and
16 harms alleged therein, which are expressly denied, were caused and/or contributed to by
17 the acts and omissions of third parties over which Defendant had no control or any duty
18 to control.

19
20 **NINTH AFFIRMATIVE DEFENSE**

21 **(Waiver and Estoppel)**

22 Plaintiff waived any claim or cause of action against Defendant for the acts alleged
23 in the Complaint, and Plaintiff should be estopped from bringing this lawsuit.

24
25 **ADDITIONAL AFFIRMATIVE DEFENSES**

26 Defendant hereby gives notice that it intends to rely on any additional affirmative
27 defenses that become available or apparent during discovery and thus reserves the right
28 to amend its answer to assert such additional affirmative defenses.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that
3 judgment be rendered in its favor and that Plaintiff take nothing on her claims, that
4 Plaintiff's claims, and each of them, be dismissed in their entirety with prejudice, and that
5 costs be awarded to Defendant.

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7 Respectfully Submitted,

8 DATED: February 15, 2013

KRONENBERGER ROSENFELD, LLP

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10 By: s/ Karl S. Kronenberger
11 Karl S. Kronenberger

12 Attorneys for Defendant
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